

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS KYLE MARTINO,
Petitioner,

1:21-cv-0037 (NLH)
MEMORANDUM OPINION & ORDER

v.

UNITED STATES OF AMERICA,
Respondent.

APPEARANCES:

Nicholas Kyle Martino
106 B Hurffville-Grenloch Road
Sewell, NJ 08080

Petitioner pro se

Philip R. Sellinger, United States Attorney
Sara Aliya Aliabadi, Assistant United States Attorney
Office of the U.S. Attorney
401 Market Street
4th Floor
P.O. Box 2098
Camden, NJ 08101

Counsel for Respondent

HILLMAN, District Judge

WHEREAS, Petitioner Nicholas Kyle Martino filed a motion to correct, vacate, or set aside his federal sentence under 28 U.S.C. § 2255, ECF No. 1; and

WHEREAS, on February 10, 2022, the Court granted a portion of Petitioner's motion for discovery. ECF No. 29. The Court

ordered Petitioner's trial counsel, Robert C. Wolf, Esq., to "produce the documents requested in Items 1 and 5 of the motion for discovery to Petitioner by March 31, 2022." Id. (citing 28 U.S.C. § 1651); and

WHEREAS, the United States informed the Court that it "spoke with Mr. Wolf on the telephone on February 11, 2022, to inform him of the Opinion and Order." ECF No. 31; and

WHEREAS, Petitioner filed a motion for an Order to Show Cause stating that Mr. Wolf had not complied with the Court's Order. ECF No. 36. He alleges that Mr. Wolf has not produced the documents to him or otherwise communicated with Petitioner as of April 18, 2022. Id. at 2. He asks the Court to issue an Order to Show Cause why Mr. Wolf should not be held in contempt of the Court's Order as well as directing Mr. Wolf to comply with the Order within 14 days, id.; and

WHEREAS, "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Court has jurisdiction over Petitioner's challenge to his federal conviction and sentence under 28 U.S.C. § 2255. His motion for discovery sought communications with trial counsel relating to his § 2255 claims, and this Court concluded the requested documents were relevant to the proceedings, ECF No. 29; and

WHEREAS, the Court will deny Petitioner's motion without prejudice. The Court will direct Robert Wolf to comply with its February 10, 2022 Order by May 31, 2022. The Court will direct the Clerk to send a copy of this Order and the February 10, 2022 Opinion and Order to Robert Wolf by certified mail; and

WHEREAS, Petitioner may file any supplement brief and appendix by June 30, 2022. The United States may file a response to the supplement by July 15, 2022,

THEREFORE, IT IS on this 12th day of May, 2022

ORDERED that Petitioner's motion for an order to show case, ECF No. 36, be, and hereby is, denied without prejudice; and it is further

ORDERED that the Clerk will send a copy of this Order and the Court's February 10, 2022 Opinion and Order, ECF Nos. 28 & 29, to Robert C. Wolf, Esq. by certified mail; and it is further

ORDERED that Robert C. Wolf, Esq., produce the requested documents by May 31, 2022, 28 U.S.C. § 1651; and it is further

ORDERED that Petitioner may file any supplement brief and appendix by June 30, 2022. The United States may file a response to the supplement by July 15, 2022; and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order on Petitioner by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.